

DEC 12 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

Part of
Public Record

REASONABLENESS OF BNSF RAILWAY)	
COMPANY COAL DUST MITIGATION)	Finance Docket No. 35557
TARIFF PROVISIONS)	
)	

MOTION FOR ADOPTION OF A PROCEDURAL SCHEDULE

In response to the Board's Decision served on November 22, 2011

(*"November 22 Decision"* or *"Decision"*), Petitioner the Western Coal Traffic League (*"WCTL"*) and BNSF Railway Company (*"BNSF"*) file this Motion for Adoption of a Procedural Schedule. In support hereof, WCTL and BNSF state as follows:

1. In its *November 22 Decision*, the Board instituted a new declaratory order proceeding (Finance Docket No. 35557).
2. In its *Decision*, the Board asked the parties to file a procedural schedule by December 12, 2011.
3. WCTL and BNSF have agreed on a procedural schedule, and request that the Board adopt the proposed procedural schedule set forth in Attachment 1. The proposed schedule calls for a 50 day discovery period, followed by evidentiary filings to be completed over the next 100 days – a schedule similar to that adopted in Finance Docket No. 35305 but more accelerated.
4. The parties also propose that the Board incorporate into the procedural schedule the expedited discovery dispute resolution procedures set forth at 49 C.F.R. § 1114.31(a)(1)-(4) promulgated to apply in stand-alone cost (*"SAC"*) and

simplified standards rate cases. These procedures should help facilitate the prompt and efficient resolution of any discovery disputes, and they are consistent with the Board's decision to use expedited discovery dispute resolution procedures in Finance Docket No. 35305 and in other recent cases. *See* STB Finance Docket No. 35305 (STB served Dec. 1, 2009) at 4 (appointing a Board employee to "act as a discovery facilitator"); *Cargill, Incorporated v. BNSF Railway Co.*, STB Docket No. 42120 (STB served Jan. 4, 2011) (adopting the discovery dispute resolution procedures set forth at 49 C.F.R. § 1114.31(a)(1)-(4) in unreasonable practice case).

WHEREFORE, for the reasons set forth above, WCTL and BNSF jointly request that the Board issue an order adopting the procedural schedule set forth in Attachment 1 and incorporate into the procedural schedule the expedited discovery dispute resolution procedures set forth at 49 C.F.R. § 1114.31(a)(1)-(4) promulgated to apply in SAC and simplified standards rate cases.

Respectfully submitted,

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Dated: December 12, 2011

**STB FINANCE DOCKET NO. 35557
PROPOSED PROCEDURAL SCHEDULE**

Day 0	Procedural schedule for declaratory order proceeding adopted
Day 10	Notices of intent to participate due
Day 50	Close of discovery
Day 95	Opening evidence and argument due from all PORs
Day 125	Reply evidence and argument due from and all PORs
Day 150	Rebuttal evidence and argument due from all PORs

CERTIFICATE OF SERVICE

I hereby certify that this 12th day of December, 2011, I have caused the forgoing Motion to be served by first-class mail, or by more expedited means, on all parties of record.


Peter A. Pfohl